436

SUPREME COURT OF THE UNITED STATES.

No. 56.

JOHN H. RANDOLPH, EXECUTOR OF ALGERNON S. RANDOLPH, DECEASED, PLAINTIFF IN ERROR,

vs.

ISRAEL BARRETT, ADMINISTRATOR OF JOEL F. RANDOLPH, DECEASED.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

INDEX.

	Original.	Print.
Writ of error	1	3
Citation and service	2	3
Writ of summons	4	4
Marshal's return	5	5
Declaration	5	5
Account	8	7
Defendants' plea	9	8
Leave granted to amend declaration	10	8
Jury of enquiry	10	9
Judgment	11	9
Clerk's certificate	11	9

S. D. Langtree, Print.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the Judges of the Circuit Court of the United States for the Southern District of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of judgment of a plea, which is in the said circuit court, before you, or some of you, between Israel Barrett, administrator of the estate of Joel F. Randolph, deceased, plaintiff, and John H. Randolph, executor of the last will and testament of Algernon S. Randolph, deceased, defendant, a manifest error hath happened, to the great damage of the said John H. Randolph, executor, as aforesaid, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in his behalf do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of
[L. S.] the said Supreme Court, the second Monday of January, in the year of our Lord one thousand eight hundred and forty, and of the Independence of the United States, the 64th year.

WM. BURNS,
Clerk, Circuit Court of United States,
Southern District of Mississppi.

Issued 17th November, 1840.

UNITED STATES OF AMERICA, *ss.*

To Israel Barrett, administrator of the estate of Joel F. Randolph, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the second Monday in January next, pursuant to a writ of error,

filed in the clerk's office of the circuit court of the United States for the ninth circuit and southern district of Mississippi, wherein John H. Randolph, executor of the last will and testament of Algernon S. Randolph, deceased, is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Golson, one of the judges of the circuit court of the United States for the southern district of Mississippi, this 17th day of November, in the year of our Lord one thousand eight hundred and forty, and in the 65th year of the Independence of the United States.

S. J. GOLSON.

ISRAEL BARRETT, Administrator, &c., }
vs. }
JOHN H. RANDOLPH, Executor, &c. }

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, at the November term, in the year of our Lord one thousand eight hundred and thirty-nine.

Be it remembered, that heretofore to wit, on the eighth day of April, in the year of our Lord one thousand eight hundred and thirty-nine, came Israel Barrett, administrator of Joel F. Randolph, deceased, by Buckner and Stewart, his attorneys, into the clerk's office of the court aforesaid, and sued out the following writ of summons ad respondendum, to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss.

The President of the United States to the Marshal of the southern district of Mississippi, greeting:

We command you without delay to summon John H. Randolph, administrator of all and singular the goods and chattels, rights and credits which were of Algernon S. Randolph, deceased, at the time of his death citizen of the State of Mississippi, that he be and appear at the circuit court of the United States, to be held at the town of Jackson, in and for the southern district of Mississippi, on the first Monday of May next, to answer to Israel Barrett, who is a citizen of the State of Louisiana, and administrator of all and singular the goods and chattels, rights and credits which were of Joel F. Randolph, deceased, at the time of his death, of a plea of tresspass on the case to his damage ten thousand dollars, and that he do file his plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against him by default; and have then there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the
[L. S.] Supreme Court of the United States, the 8th day of April, A. D. 1839, and of the Independence of the United States the sixty-third.

WM. BURNS, *Clerk*.

Marshal's return, executed personally, J. H. Randolph, April 23d, 1839.

WM. M. GWIN, *Marshal*.
By B. F. HARDIN, *D. M*.

And on the same day of suing out the writ aforesaid, the plaintiff, by his attorneys aforesaid, filed their declaration herein, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Mississippi, United States Circuit Court for the Southern District, to May term, 1839.

Israel Barrett, who is a citizen of the State of Louisiana, administrator of all and singular the goods and chattels, rights and credits which were of Joel F. Randolph, deceased, at the time of his death, who died intestate, complains of John H. Randolph, who is a citizen of the State of Mississippi, administrator of all and singular the goods and chattels, rights and credits which were of Algernon S. Randolph, deceased, at the time of his death, who died intestate, in custody, &c., of a plea of trespass on the case upon promises. For that, whereas, the said Algernon S. Randolph, heretofore, and in the lifetime of the said Algernon S. Randolph, since deceased, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and thirty-nine, at, to wit, the district aforesaid, was indebted to the said Joel F. Randolph, in his lifetime, in the sum of six thousand dollars, lawful money, for the excepting of divers bills of exchange, drawn by the said Algernon S. Randolph, in his lifetime, on said Joel F. Randolph, in his lifetime, and by him accepted, by and at the special instance and request of said Algernon S. Randolph, since deceased, and for the advancing and paying of money upon the same; and being so indebted, he, the said Algernon S. Randolph, in his lifetime, since deceased, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there promised the said Joel F. Randolph, in his lifetime, since deceased, to pay him the said sum of money above specified, when he, the said Algernon S. Randoph, since deceased, should be thereunto afterwards requested.

And for that, whereas, also, the said Algernon S. Randolph afterwards, and in the lifetime of the said Algernon S. Randolph, since deceased, to wit, on the first day of January, in the year of

our Lord one thousand eight hundred and thirty-nine, at, to wit, the district aforesaid, was indebted to the said Joel F. Randolph, in his lifetime, since deceased, in the sum of six thousand dollars, lawful money, for so much money before that time lent and advanced by the said Joel F. Randolph, in his lifetime, since deceased, to the said Algernon S. Randolph, in his lifetime, since deceased, and at his, the said A. S. Randolph's special instance and request. And for other money by the said Joel F. Randolph, in his lifetime, since deceased, before that time paid, laid out and expended for the said Algernon S. Randolph, in his lifetime, since deceased, at the like request of the said Algernon S. Randolph. And for other money by the said Algernon S. Randolph, in his lifetime, since deceased, before that time, had and received to and for the use of the said Joel F. Randolph, in his lifetime, since deceased; and being so indebted, the said A. S. Randolph in his lifetime, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at, to wit, the district aforesaid, undertook, and then and there promised the said Joel F. Randolph, in his lifetime, well and truly to pay to him, said Joel F. Randolph, the said sum of money in this count mentioned, when the said Algernon S. Randolph, since deceased, should be thereunto afterwards requested. And whereas, also the said Algernon S. Randolph, in his lifetime, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, accounted together with the said Joel F. Randolph, in his lifetime, since deceased, of and concerning divers other sums of money before that time due, and owing from the said Algernon S. Randolph, in his lifetime, to the said Joel F. Randolph, since deceased, and then and there being in arrears and unpaid, and upon such accounting, the said Algernon S. Randolph, deceased, in his lifetime, then and there was found to be in arrear and indebted to the said Joel F. Randolph, in his lifetime, since deceased, in the further sum of six thousand dollars. And being so found in arrear and indebted to the said Joel F. Randolph, in his lifetime, since deceased, the said Algernon S. Randolph, in his lifetime, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at, to wit, the district aforesaid, undertook, and then and there promised the said Joel F. Randolph, in his lifetime, since deceased, to pay unto him the said sum of money last mentioned, when he, the said Algernon S. Randolph, since deceased, should be thereunto afterwards requested.

Yet the said Algernon S. Randolph, in his lifetime, nor the said defendant, administrator as aforesaid, since the death of the said Algernon S. Randolph, have not, nor has either of them paid the said sum of money above specified or any part thereof, to the said Joel F. Randolph in his lifetime, or the said plaintiff, administrator as aforesaid, since the death of the said Joel F. Randolph, but to pay the same, or any part thereof, to the said Joel F. Randolph in his lifetime, or the said plaintiff, administrator as aforesaid, since the death of the said Joel F. Randolph, the said Algernon S. Randolph

in his lifetime wholly refused, and the said defendant, administrator as aforesaid, ever since the death of the said Algernon S. Randolph, has hitherto wholly refused, and still refuses so to do, to the damage of the said plaintiff ten thousand dollars, and therefore he sues, &c.

BUCKNER & STEWART,
Attorneys for plaintiff.

Copy of Account Filed.

A. S. Randolph, Dr. to Estate of J. F. Randolph, for accepting sundry drafts, paying over and advancing money.

1836.			
Feb. 2,	To coms. for paying $617 in land office, 1 p. c.		$6 17
18,	To accepting draft $8,000, at 2 1-2 per cent. -		200 00
20,	To paying draft in Bank La. $1,600, 1 per cent.		16 00
Mar. 9,	To paying draft No. 334, for $3,000 - -		30 00
17,	To coms. accepting draft $4,000, at 2 1-2 p. cent.		100 00
18,	To paying draft $3,000, at 1 per cent. - -		30 00
18,	To accepting draft $3,500, at 2 1-2 per cent. -		87 50
Apr. 7,	To paying draft Bank La. $1,200, at 1 per cent.		12 00
May 5,	To coms. accepting draft $1,100, at 2 1-2 p. cent.		27 50
26,	To coms. accepting draft $5,000, do -		125 00
Jun. 10,	To coms. accepting draft $8,600, do -		215 00
17,	To coms. accepting draft $4,500, do -		112 50
July 1,	To coms. accepting draft $1,100, do -		27 50
8,	To coms. accepting draft $4,000, do -		100 00
30,	To coms. $10,700, at 2 1-2 per cent. - -		267 00
Sep. 23,	To coms. for advancing pay draft $5,000, 2 1-2 p. c.		125 00
Oct. 3,	To coms. accepting draft $8,731, do -		218 00
14,	To advancing pay draft $4,500, do -		112 50
25,	To accepting draft $4,200, - do -		105 00
27,	To accepting draft $5,200 - - -		130 00
28,	To advancing pay draft $1,100 - - -		27 50
31,	To accepting draft $150 - - - -		3 75
Nov. 2,	To coms. draft $875 - - - -		21 87
13,	To advancing pay draft $150 at 2 1-2 per cent.		3 75
Dec. 6,	To accepting Davidson's draft $12,000 - -		300 00
28,	To advancing pay Davidson's draft $875 -		21 87
31,	To coms. accepting draft for $12,000, at 2 1-2 p. c.		300 00
1837.			
Jan. 4,	To coms. accepting draft for $1,700 do -		42 50
30,	To coms. accepting draft for $12,500 do -		312 50
31,	To advancing pay protested draft $1,520 -		38 00
	To interest on above advance for 26 days -		7 00
Feb. 27,	To coms. for accepting draft $6,000, 2 1-2 p. c.		150 00
21,	To coms. for accepting draft $1,700 do -		42 00
27,	To coms. for accepting draft $7,000 do -		175 00

1837.			
Mar. 7,	To coms. adv. $700, take up draft $1,700	2 1-2 p. c.	17 50
31,	To accepting draft for $12,687 50, at	2 1-2 p. c.	317 17
Apr. 21,	To accepting draft for $1,667	do -	41 60
May 1,	To accepting draft for $7,075	do -	176 87
20,	To accepting draft for $13,653 37	do -	341 43
			$4,386 73
To balance cash advanced, pay your draft for $1,700, due 7th March,			700 00
To balance for advances to pay draft and protest $1,517, and money loaned you in New Orleans,			20 76
To discount on $200 Mississippi money, at 2 1-2 per cent.			5 00
To protest on draft for $1,700, at Bank Louisiana			4 00
			$5,116 50

Interest on above advance of $700 to be added.

And the said John H. Randolph comes and defends &c., when &c., and prays judgments of the plaintiff's writ and declaration, because he says, that he the said John H. Randolph is not administrator of the goods and chattels, rights and credits which were of Algernon S. Randolph at the time of his death, nor hath he ever administered as such upon any of the goods or chattels, rights or credits of the said Algernon S. Randolph, but that he the said John H. Randolph is the only executor of the last will and testament of the said Algernon S. Randolph, who has qualified as such, and this he is ready to verify; wherefore he prays judgment of the said writ and declaration, and that the same may be quashed, &c.

SMITH and LEAGH,
for Defendant.

John H. Randolph, the defendant in the above named suit, being sworn says, that the facts and allegations stated and set forth in the above plea are true.

JNO. H. RANDOLPH.

Sworn to and subscribed before me, C. C. West, a justice of the peace for the county of Wilkinson, this 29th day of April, 1839. Witness my hand and seal.

C. C. WEST, *J. P.* [L. S.]

And afterwards to wit, at the May term of the said circuit court, to wit, at a circuit court of the United States held at the town of Jackson, in and for the southern district of Mississippi, on the fourteenth day of May, in the year of our Lord one thousand eight hundred and thirty-nine, came the parties by their respective attorneys, and on motion of the plaintiff by his attorneys, it is

ordered that he have leave to amend his will and declaration herein, which said amendment is made accordingly by striking out the words "administrator of all and singular the goods and chattels, rights and credits, which were of Algernon S. Randolph, at the time of his death, who died intestate," and inserting "executor of the last will and testament of Algernon L. Randolph, deceased," and thereupon it was further ordered, that this cause be continued till the next November term of the court aforesaid.

And afterwards, to wit, at the said November term of the court aforesaid, to wit, on the fourteenth day of November, in the year of our Lord one thousand eight hundred and thirty-nine; came the plaintiff by his attorneys aforesaid, and it appearing to the satisfaction of the court, that the writ aforesaid has been duly executed on the defendant John H. Randolph, executor of the last will and testament of Algernon S. Randolph, deceased, and he failing to appear though solemnly called,

Therefore, it is considered by the court, that the said plaintiff Israel Barrett, administrator of Joel F. Randolph, deceased, recover against the said defendant, John H. Randolph, executor of Algernon S. Randolph, deceased, his damages which he has sustained by reason of the premises; but because those damages are unknown to the court here, it is ordered that a jury come here to inquire of the same, and a jury being called, came, to wit: W. W. New, George Fletcher, Alexander McKay, P. M. Alston, Perry King, L. C. Sayre, Parmenas Briscoe, John W. Elder, William Nash, Asa Tinnin, Wm. N. Mercer, and H. W. Huntington, who being empannelled, tried and sworn, the truth to speak concerning the matters within contained, upon their oath do say; that the said plaintiff hath sustained damages by reason of the premises in the declaration mentioned, to the sum of five thousand six hundred and fifty-five dollars and ninety-three cents.

Therefore, it is considered by the court, that the said plaintiff recover against the said defendant, the sum of five thousand six hundred and fifty-five dollars and ninety-three cents, the damages by the jurors aforesaid, in form aforesaid, assessed, and his costs by him about his suit in this behalf expended, to be levied of the goods and chattels which were of the said Algernon S. Randolph, deceased, at the time of his death in the hands of the said John H. Randolph, his executor, to be administered.

UNITED STATES OF AMERICA, *sct.*
Southern District of Mississippi, Circuit Court of the U. S.

I, William Burns, clerk of the court aforesaid, do hereby certify, that the foregoing is a full, true, and complete transcript of the record in a certain judgment now remaining of record in my office,